



ARKANSAS JUDICIARY

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## **Rule 28. Persons Before Whom Depositions May Be Taken.**

(a) Within this State and Elsewhere in the United States. Within this state and elsewhere in the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of this State or of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony.

(b) In Foreign States or Countries. In a foreign state or country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place where the examination is held, either by the law thereof or by the law of the United States, or (2) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of his commission to administer any necessary oath and take testimony, or (3) pursuant to any applicable treaty or convention or pursuant to a letter of request, whether or not captioned a letter rogatory. A commission or a letter of request shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter of request that the taking of the deposition in any other manner is impractical or inconvenient, and both a commission and a letter of request may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter of request may be addressed "To The Appropriate Authority in (name of the country)." When a letter of request or any other device is used pursuant to any applicable treaty or convention, it shall be captioned in the form prescribed by that treaty or convention. Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States under these rules.

(c) For Use in Foreign Countries. A party desiring to take a deposition or have a document or other thing produced for examination in this state, for use in a judicial proceeding in a foreign country, may produce to a judge of the circuit court in the county where the witness or person in possession of the document or thing to be examined resides or may be found, letter rogatory, appropriately authenticated, authorizing the taking of such deposition or production of such document or thing on notice duly served; whereupon it shall be the duty of the court to issue a subpoena requiring the witness to attend at a specified time and place for examination. In case of failure of the witness to attend or refusal to be sworn or to testify or to produce the document or thing requested, the court may find the witness in contempt.

(d) Disqualification for Interest. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

Reporter's Notes (as modified by the Court) to Rule 28: - 1. Rule 28 is very similar to FRCP 28. This rule is a slightly modified version of superseded Ark. Stat. Ann. 28-350 (Repl. 1962) which tracked FRCP 28 prior to the 1963 amendments thereto. This rule does not make any appreciable changes in Arkansas law. As a practical matter, anyone authorized by law to administer oaths is qualified to take depositions.

2. Section (c) is a combination of 28 U.S.C. Section 1782 and superseded Ark. Stat. Ann. 28-346 (Repl. 1962). Nothing in this rule requires that the deposition actually be taken before the court. In this sense the rule may be a departure from the superseded statute.

Addition to Reporter's Note, 1989 Amendment: - Rule 28(c) is amended to apply only to the taking of depositions for use in judicial proceedings in foreign countries. Rule 45(f), as amended in 1989, now governs the taking of depositions for use in proceedings in other states.

Addition to Reporter's Notes, 1997 Amendment: - This revision, based on a 1993 change in federal Rule 28(b), is intended to make effective use of the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, and of any similar treaties that the United States may enter into in the future which provide procedures for taking depositions abroad. The term "letter of request" has been substituted for "letter rogatory" because it is the primary method provided by the Hague Convention. A letter rogatory is essentially a form of a letter of request.

Addition to Reporter's Notes, 2001 Amendment: - Subdivision (c) has been amended by deleting the reference in the first sentence to chancery and probate courts. Constitutional Amendment 80 established circuit courts as the "trial courts of original jurisdiction" in the state and abolished the separate chancery and probate courts.

### **History Text:**

History. Amended November 20, 1989, effective January 1, 1990; amended November 18, 1996, effective March 1, 1997; amended May 24, 2001, effective July 1, 2001

### **Associated Court Rules:**

Rules of Civil Procedure

### **Group Title:**

V. Depositions and Discovery

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